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County of San Francisco
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**SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO**

Geoffrey Shmigelsky,
Plaintiff,

vs.

Getaround, Inc., Sam Zaid, Adam Kosmicki,
Mohamed Zaid, Tariq Zaid, Leo Grant, Kasra
Maftoon, and Ilan Kroo,
Defendants.

Case No.:

COMPLAINT FOR FRAUD

Demand for Jury Trial

CGC-19-572740

Plaintiff Geoffrey Shmigelsky, aka Jeffrey Shmigelsky ("Plaintiff"), hereby makes the following allegations against defendants Getaround, Inc. ("Getaround" or the "Company"), Sam Zaid, Adam Kosmicki, Mohamed Zaid, Tariq Zaid, Leo Grant, Kasra Maftoon, and Ilan Kroo (collectively, "Defendants").

NATURE OF THIS ACTION

1. This action challenges the fraudulent and unfair conduct of Getaround's top executives in deceiving the Company's earliest outside investor into selling his shares to their family and friends for approximately \$1,785,000 less than what they knew they were worth, thereby instantly enriching their family and friends at Plaintiff's expense.

2. In early 2018, Plaintiff was approached by investors interested in purchasing his shares in Getaround. Because Getaround is a private company with little publicly available

1 financial information, they struggled to value Plaintiff's shares. Plaintiff thus asked for that
2 information from Getaround's CEO and co-founder, Sam Zaid.

3 3. Mr. Zaid saw an opportunity and agreed to help. Getaround had a contractual
4 right of refusal to purchase any shares Plaintiff tried to sell, under the same terms and conditions
5 of any sales agreement that Plaintiff entered into with a prospective buyer. Thus, Mr. Zaid was
6 in a position to provide information designed to drive down the value of Plaintiff's shares, and if
7 Plaintiff agreed to a transaction at a lower price, Mr. Zaid could cause Getaround to exercise its
8 right of first refusal to buy Plaintiff's shares at a large discount off its true value.

9 4. Moreover, since Getaround also had the right to assign its right of first refusal to
10 whoever it wanted, Mr. Zaid could cause Getaround to exercise its right to purchase Plaintiff's
11 shares (at a discounted price) and then gift that opportunity to Mr. Zaid's friends and family.

12 5. Thus, over the next five weeks, Mr. Zaid and Getaround's CFO, Adam Kosmicki,
13 provided detailed and misleading information about Getaround's financial condition and
14 prospects, which they knew Plaintiff and his interested buyers would use to value Plaintiff's
15 shares. Relying on that information, Plaintiff agreed to sell 300,000 shares at \$1.80 per share.

16 6. Importantly, Messrs. Zaid and Kosmicki concealed that Getaround was on the
17 brink of closing an \$18 million Series C-1 funding round priced at \$7.75 per share, which was
18 disclosed by Getaround just two weeks later. At Messrs. Zaid and Kosmicki's direction,
19 Getaround then invoked its right of refusal to purchase Plaintiff's shares at \$1.80 per share—a
20 **330 percent discount** to the price Getaround disclosed in the Series C-1.

21 7. Messrs. Zaid and Kosmicki also concealed a major strategic partnership with
22 Uber, which had been in the works for over a year and was announced only a month after
23 Plaintiff was misled into agreeing to sell at \$1.80 per share. Two days after that announcement,
24 Plaintiff learned that Getaround had assigned the right to purchase his shares to Mr. Zaid's
25 father, brother, and friends, as well as the father of Getaround co-founder and CTO, Elliot Kroo,
26 who collectively paid Plaintiff just \$540,000 for shares worth \$2,325,000 at the Series C-1
27 pricing.

1 Getaround assigned this purported right to him. Plaintiff is informed and believes that prior to
2 that purchase, Tariq Zaid was an existing shareholder and an advisor of Getaround.

3 17. Defendant Leo Grant is an individual domiciled in Ottawa, Ontario, Canada. On
4 information and belief, Mr. Grant is Sam Zaid's friend. He purchased 60,000 shares of
5 Plaintiff's common stock of Getaround at a price of \$1.80 per share, after Getaround assigned
6 this purported right to him.

7 18. Defendant Kasra Maftoon is an individual domiciled in Sydney, Australia, and is
8 originally from Ottawa, Ontario, Canada. On information and belief, Mr. Maftoon is Sam Zaid's
9 friend. He purchased 60,000 shares of Plaintiff's common stock of Getaround at a price of \$1.80
10 per share, after Getaround assigned this purported right to him.

11 19. Defendant Ilan Kroo is an individual domiciled in San Mateo County, California.
12 On information and belief, Mr. Kroo is the father of Getaround co-founder and CTO, Elliot
13 Kroo, who Getaround's website describes as "the genius behind our technology." Ilan Kroo
14 purchased 60,000 shares of Plaintiff's common stock of Getaround at a price of \$1.80 per share,
15 after Getaround assigned this purported right to him. Plaintiff is informed and believes that prior
16 to that purchase, Ilan Kroo was an existing shareholder of Getaround.

17 20. Defendants Mohamed Zaid, Tariq Zaid, Leo Grant, Kasra Maftoon, and Ilan Kroo
18 are collectively referred to herein as the "Purchaser Defendants."

19 **JURISDICTION AND VENUE**

20 21. This Court has jurisdiction over this action because one or more of the defendants
21 reside in California and conducted significant business activity within the state of California.

22 22. The Court's jurisdiction is also proper pursuant to provisions in the Stock
23 Transfer Agreements signed by Plaintiff, Getaround, and the Purchaser Defendants, under which
24 each of these parties expressly consented to jurisdiction in this Court:

25 **Dispute Resolution.** The parties (i) hereby irrevocably and unconditionally
26 submit to the jurisdiction of the federal or state courts located in the Northern
27 District of California for the purpose of any suit, action or other proceeding arising
28 out of or based upon this Agreement, (ii) agree not to commence any suit, action or
other proceeding arising out of or based upon this Agreement except in the federal
or state courts located in the Northern District of California, and (iii) hereby waive,
and agree not to assert, by way of motion, as a defense, or otherwise, in any such

1 suit, action or proceeding, any claim that it is not subject personally to the
2 jurisdiction of the above-named courts, that its property is exempt or immune from
3 attachment or execution, that the suit, action or proceeding is brought in an
inconvenient forum, that the venue of the suit, action or proceeding is improper or
that this Agreement or the subject matter hereof may not be enforced in or by such
court.

4 (Stock Transfer Agreements § 11(g).)

5 23. Venue in this Court is proper because one or more of the defendants reside in San
6 Francisco County.

7 **FACTUAL ALLEGATIONS**

8 **Getaround's Business and History**

9 24. Headquartered in San Francisco, Getaround is an online carsharing platform that
10 allows drivers to rent cars from private car owners, and owners to rent out their cars for payment.

11 25. The Company was founded in 2009 by Defendant Sam Zaid, Elliot Kroo, and
12 Jessica Scorpio, and has enjoyed rapid success. In 2011, it won the TechCrunch Disrupt award,
13 a well-known competition for tech startups. In 2012, it began serving Portland, Oregon with the
14 aid of a \$1.725 million grant from the Federal Highway Administration. In 2013, it launched its
15 on-demand carsharing platform, and by September 2015, its revenue had doubled to tens of
16 millions of dollars in the previous six months alone. Today, Getaround has grown to over
17 200,000 members, has thousands of cars available throughout major metropolitan areas across
18 the United States, and calls itself the “global leader in carsharing.”

19 26. In less than 10 years since its founding, Getaround has raised over \$400 million
20 dollars in private financing, which included Series A, B, C, and D funding rounds from a variety
21 of top-tier venture capital firms and companies including Menlo Ventures, Toyota Motor
22 Corporation, and Softbank.

23 **Plaintiff's Early Investments in Getaround**

24 27. Plaintiff Geoffrey Shmigelsky knew Defendant Sam Zaid before Mr. Zaid co-
25 founded Getaround and became its CEO. Plaintiff is an Associate Founder of Singularity
26 University, where he met the founders of Getaround in the summer of 2009.

27 28. When Getaround was still in its infancy, Plaintiff became the Company's earliest
28 outside investor, and supported it financially for a year and a half. Among other investments in

1 the Company, Plaintiff acquired an option to purchase 577,500 shares of Getaround common
2 stock on or around June 25, 2010.

3 29. In 2014, Plaintiff exercised his option to purchase a total of 577,500 shares of
4 Getaround common stock. 300,000 of these shares are the focus of this litigation.

5 **Getaround's Right of First Refusal to Purchase Plaintiff's Stock**

6 30. Under Getaround's 2010 Stock Plan Exercise Agreement (the "Exercise
7 Agreement"), Getaround retained for itself a right of first refusal ("ROFR") to purchase
8 Plaintiff's common stock if he ever tried to sell or transfer that stock.

9 31. Section 3(a)(i) of the Exercise Agreement required that Plaintiff, before selling or
10 transferring his shares, "deliver to the Company a written notice" stating, *inter alia*, "the terms
11 and conditions of each proposed sale or transfer," and "offer the Shares at the same price ... and
12 upon the same terms ... to the Company or its assignee(s)."

13 32. Section 3(a)(ii) states that Getaround or its assignee(s) could exercise this ROFR
14 "[a]t any time within thirty (30) days after receipt of the Notice ... by giving written notice" to
15 Plaintiff.

16 33. Section 3(c) provides that Getaround could assign the ROFR "to any holder or
17 holders of capital stock of the Company or other person or organizations."

18 34. The Exercise Agreement contains a California governing law provision in Section
19 8(a), providing that the agreement "and all acts and transactions pursuant hereto and the rights
20 and obligations of the parties hereto shall be governed, construed and interpreted in accordance
21 with the laws of the State of California, without giving effect to principles of conflicts of law."

22 **The Getaround Defendants Voluntarily Disclose Financial Information**
23 **to Plaintiff and Investors Interested in Buying Plaintiff's Shares.**

24 35. In January 2018, nearly eight years after Plaintiff had originally invested in
25 Getaround, a venture capital firm—Kline Hill Partners LP—expressed interest in buying his
26 shares. Plaintiff and Kline Hill, however, struggled to perform their due diligence in valuing
27 those shares, due to the dearth of public information about Getaround.

1 36. Looking for help in valuing his shares, Plaintiff reached out to Sam Zaid by email
2 on January 23, 2018, and informed Mr. Zaid that he had a “pending offer from a VC to acquire
3 [his] remaining shares” in Getaround. Plaintiff asked Mr. Zaid if there was “any public
4 information regarding the revenue growth of the company in 2016 / 2017,” as “the last news of
5 growth” was a “few years” old. Plaintiff explained that “[a]ny data would help [his] argument
6 for valuation.”

7 37. In his January 28 reply to Plaintiff, Mr. Zaid confirmed that there was “no public
8 information around revenue growth, no.” But Mr. Zaid disclosed the following information to
9 Plaintiff: “I can tell you that the company did more than 100% YOY growth from 2016 to 2017,
10 and that our new markets are growing very quickly. The company has a very positive outlook
11 with lots of opportunity ahead.”

12 38. On January 30, seeking more information about the Company, Plaintiff asked Mr.
13 Zaid if he would speak directly with his potential buyer, Kline Hill. Mr. Zaid agreed almost
14 immediately: “Sure, I would be interested.... Connect me with the VC and I’m happy to chat
15 with them as a next step.”

16 39. Plaintiff then worked with Mr. Zaid and Getaround’s CFO (Defendant Adam
17 Kosmicki) in early February to organize a call between Getaround, Kline Hill, and a second
18 venture capital firm (G Squared) that had also expressed interest in buying Plaintiff’s shares.

19 40. Between February 12 and March 7, Getaround, Kline Hill, and G Squared
20 participated in at least two conference calls and exchanged a number of emails and documents
21 regarding Getaround’s financial condition and prospects. For instance, on February 12, a
22 conference call was held between Getaround’s CFO Adam Kosmicki, Tom Kelly and Jared
23 Barlow of Kline Hill, and Spencer McLeod of GSquared. On February 22, Getaround shared
24 additional written materials with Kline Hill, including financial information about Getaround.
25 And on March 7, Getaround held a second conference call with Kline Hill.

26 41. Plaintiff is informed and believes that at no point during any of the above-
27 referenced communications did the Getaround Defendants disclose any imminent financing
28 rounds or other major events likely to affect the value of Getaround’s shares.

1 42. Based on information provided by Getaround, Kline Hill, G Squared, and Plaintiff
2 negotiated a price for the sale of Plaintiff's Getaround shares. Plaintiff is informed and believes
3 that neither Kline Hill nor G Squared were made aware of Getaround's imminent C-1 financing
4 round or Uber partnership in their discussions with Getaround, and thus were unable to pass
5 along any information on those topics to Mr. Shmigelsky, or to factor those highly material
6 events into the valuation of Plaintiff's shares. Nor at any time did the Getaround Defendants
7 disclose these highly material events to Plaintiff, despite Mr. Zaid's earlier disclosure to Plaintiff
8 of "lots of opportunity ahead" and despite the obvious importance of these events in valuing
9 Plaintiff's shares.

10 43. Plaintiff is informed and believes that the Getaround Defendants knew and
11 intended that their communications with Kline Hill and G Squared about Getaround's financial
12 condition and prospects would be used to come up with a valuation and offer for Mr.
13 Shmigelsky's shares in Getaround, and that Mr. Shmigelsky trusted and would rely on that
14 information in deciding whether or not to accept any such offer. In fact, as Sam Zaid
15 acknowledged in his January 28 email to Mr. Shmigelsky, there was no public information
16 concerning Getaround's financial condition and prospects, meaning that Mr. Shmigelsky and his
17 potential buyers had no other choice but to rely on the information provided by the Getaround
18 Defendants.

19 **Plaintiff Agrees to Sell His Shares at \$1.80 per share, Then**
20 **Getaround Discloses a Financing Round at \$7.75 per share.**

21 44. On March 8, 2018—one day after its second conference call with Getaround and
22 based on information provided by the Getaround Defendants—Kline Hill offered to purchase
23 Plaintiff's shares for \$1.70 per share. That price was based on a slight discount to Getaround's
24 last financing round a year earlier in April 2017, which was valued at \$2.20 per share.

25 45. Having not been informed that there was anything else out there that could
26 significantly affect the value of his shares, Plaintiff agreed to sell all 300,000 of his Getaround
27 shares at \$1.80 per share, and signed a binding letter of intent to that effect on March 8.

1 46. On March 12, Plaintiff delivered a Notice of Proposed Transfer of Stock to
2 Getaround, as required by Getaround’s Exercise Agreement, providing notice of his intent to sell
3 his 300,000 shares to Kline Hill and G Squared at a purchase price of \$1.80 per share.

4 47. Just 11 days later on March 23, Getaround filed a Fourth Amended and Restated
5 Certificate of Incorporation—signed and certified by Sam Zaid—disclosing a new Series C-1
6 financing round priced at ***\$7.75 per share***. That price was over ***330 percent higher*** than the
7 \$1.80 per share price at which Plaintiff had just agreed to sell his shares based on information
8 provided by the Getaround Defendants.

9 48. On information and belief, Getaround raised approximately \$18 million in this
10 Series C-1 round from Toyota Motor Corporation at or around \$7.75 per share. A major
11 financing round such as this takes months of preparation to complete, so the Getaround
12 Defendants necessarily knew about, but failed to disclose, this upcoming Series C-1 at \$7.75 per
13 share while they were concurrently communicating with Plaintiff, Kline Hill, and G Squared
14 about the Company’s financial condition and prospects between January 28 and March 7.

15 **Getaround Invokes the ROFR, But Refuses to Disclose the Identities of the Buyers.**

16 49. Getaround did not wait long to invoke its ROFR to purchase Plaintiff’s shares.
17 On March 26, three days after Getaround disclosed the Series C-1, Mr. Kosmicki informed
18 Plaintiff that Getaround would likely purchase a portion of his shares. Still in the dark about the
19 Series C-1, Plaintiff innocently asked Mr. Kosmicki, “if you don’t mind me asking, is it
20 Getaround buying the shares or a shareholder? If it is Getaround, what is the motivation?” His
21 questions were ignored.

22 50. A week later, on April 4, Mr. Kosmicki informed Plaintiff that Getaround was
23 “going to exercise the ROFR in full.” A 330 percent discount was too good to pass up. Plaintiff
24 again asked, “Will it just be one buyer – Getaround the company?” And again, Mr. Kosmicki
25 simply ignored the question.

26 51. On April 10, Mr. Kosmicki disclosed to Plaintiff that there would be “5 buyers @
27 60,000 shares each,” but still would not provide the identities of the buyers despite a third
28 request from Plaintiff to “[i]dentify who the buyers are and their buying position.” Mr.

1 Kosmicki also confirmed that Sam Zaid was directly involved in facilitating the sale to these
2 buyers, informing Plaintiff that “Sam and I have the investors organized to move quickly once
3 we send out the paperwork.” As Plaintiff would later discover, most of these “investors” were
4 Mr. Zaid’s family and friends.

5 52. On information and belief, the Getaround Defendants knew that the Purchaser
6 Defendants had already agreed to purchase Mr. Shmigelsky’s shares, and intended for them to
7 purchase that stock, before Getaround disclosed the Series C-1 financing round and/or
8 Getaround’s partnership with Uber, as discussed below.

9 **Getaround Announces a Major Partnership with Uber.**

10 53. On April 11, it was publicly announced that Getaround had entered into a major
11 partnership with the ubiquitous ridesharing company, Uber. The two companies had teamed up
12 to create “Uber Rent,” a service that allows users to rent vehicles from Getaround’s fleet through
13 Uber’s app.

14 54. As an article published on engadget.com reported that day, “Getaround has an
15 application of its own, but the Uber integration will put the vehicles listed on its platform in front
16 of even more potential customers, which could entice more people to list their vehicles.”¹
17 Indeed, by one account, Uber had over 40 million users in the U.S. in March 2018 alone,²
18 meaning that Getaround’s partnership with Uber would allow Getaround to tap into Uber’s vast
19 user base.

20 55. Further, an article published on Inc.com featuring an interview with Sam Zaid
21 reported that Getaround had “spent more than a year working with Uber to create Uber Rent,”
22 and that “Getaround’s ‘team’” that had worked on the negotiations with Uber “involved most of
23 its company.”³ Thus, on information and belief, the Getaround Defendants had been aware of,
24 but failed to disclose, the Uber partnership while they were concurrently communicating with
25

26
27 ¹ <https://www.engadget.com/2018/04/11/uber-rent/>.

28 ² <https://www.statista.com/statistics/833743/us-users-ride-sharing-services/>.

³ <https://www.inc.com/cameron-albert-deitch/getaround-just-inked-a-huge-partnership-with-uber-heres-how.html>.

1 Plaintiff, Kline Hill, and G Squared about the Company's financial condition and prospects in
2 their earlier communications.

3 **Plaintiff Learns That Getaround Had Assigned Its ROFR to**
4 **Family Members and Friends of Getaround's Top Executives.**

5 56. On April 13, two days after Getaround announced the Uber partnership, Plaintiff
6 finally learned the identities of the five individuals to whom Getaround had assigned the ROFR
7 to buy his shares. As it turned out, they were family members and friends of Getaround's
8 founder and CEO Sam Zaid, and the father of its co-founder and CTO, Elliot Kroo:

- 9 a. Mohamed Zaid, Sam Zaid's father;
- 10 b. Tariq Zaid, Sam Zaid's brother;
- 11 c. Leo Grant, Sam Zaid's friend;
- 12 d. Kasra Maftoon, Sam Zaid's friend; and
- 13 e. Ilan Kroo, Elliot Kroo's father.

14 57. Each of these Purchaser Defendants acquired 60,000 shares of Mr. Shmigelsky's
15 common stock at a price of \$1.80 per share (for a total of \$108,000 each), pursuant to separate
16 Stock Transfer Agreements signed by each them, Adam Kosmicki on behalf of Getaround, and
17 Plaintiff.

18 58. As a result of the Getaround Defendants' conduct, Plaintiff was fraudulently
19 induced into selling his 300,000 shares at \$1.80 per share to family members and friends of
20 Getaround's most senior executives for a total of \$540,000, while Getaround had priced its
21 shares in the Series C-1 at \$7.75 per share (or a total of \$2,325,000 for 300,000 shares). In other
22 words, by failing to disclose the Series C-1 (and the Uber partnership) to Plaintiff and his
23 original buyers, the Getaround Defendants bilked Mr. Shmigelsky out of upwards of \$1,785,000,
24 while simultaneously enriching their family and friends by that amount.

25 59. On information and belief, the Purchaser Defendants were informed and aware
26 that the shares they were purchasing from Mr. Shmigelsky were worth \$7.75 per share, or at least
27 much more than the \$1.80 per share they paid. Indeed, on information and belief, Defendants
28 Tariq Zaid and Ilan Kroo were existing shareholders of Getaround, and given their close familial

relationships with Sam Zaid and Elliot Kroo, very likely had access to material information concealed from Plaintiff.

Additional Events Confirm a Valuation at or Near \$7.75 Per Share.

60. On April 18, Getaround filed a Fifth Amended and Restated Certificate of Incorporation—signed and certified by Sam Zaid—disclosing a Series C-2 financing round priced again at \$7.75 per share. This second filing less than a month of its Series C-1 filing indicating a value of \$7.75 per share confirms that that pricing was no fluke. Importantly, this consistent pricing also confirms that the value of the Uber partnership—which was announced after the Series C-1 but before the Series C-2—was already factored into the Series C-1 when Getaround disclosed it on March 23, 2018.

61. Plaintiff is informed and believes that on April 23, his original buyer (Kline Hill) gave notice to purchase Getaround shares between \$6.64 and \$7.75 from a seller provided by Getaround. After Getaround had indicated that it would exercise the ROFR on Plaintiff's shares in full, Kline Hill obviously could not buy those shares. On information and belief, Kline Hill nevertheless expressed continued interest in buying Getaround stock, and Getaround found a different seller for Kline Hill. But rather than the \$1.80 per share price Kline Hill had offered to Plaintiff on March 8, Kline Hill's April 23 notice indicated that it would purchase Getaround shares between \$6.64 and \$7.75 from that seller. The only thing that had changed between those dates, and the only logical reason why Kline Hill would agree to pay that premium, was that Getaround had disclosed what it had previously concealed from Kline Hill and Plaintiff: that the true value of Getaround was at or near \$7.75 per share as disclosed in the Series C-1 and C-2, and that the Company had secured the partnership with Uber. Had those highly significant events been disclosed by the Getaround Defendants just days earlier than they were when they were communicating with Kline Hill about Getaround's financial condition, Kline Hill very likely would have paid between \$6.64 and \$7.75 per share for Plaintiff's shares, rather than a different seller's shares.

62. Adding insult to injury, when Plaintiff began to suspect that Getaround had closed a Series C-1 financing round in March for approximately \$7.75 per share, Defendant Adam

1 Kosmicki misleadingly suggested that that financing round had not even happened. Specifically,
2 in a May 19 email, Plaintiff informed Mr. Kosmicki that he had read an article indicating that
3 “On March 23, 2018, the company raised \$25.6 million from Braemar Energy Ventures and
4 others, at an estimated \$651.1 million post-money valuation.” The next day, Mr. Kosmicki
5 responded, “That info is not correct,” but refused to elaborate. Plaintiff is informed and believes
6 that Mr. Kosmicki was attempting to conceal the valuation disclosed in the Series C-1, so that
7 Plaintiff would not suspect that he had been kept in the dark about that valuation.

8 63. Further, on August 21, Getaround announced that it had raised \$300 million from
9 Softbank in a Series D financing round at a price of \$6.64 per share. On information and belief,
10 the Getaround Defendants had been working on this financing round for months and were fully
11 aware that the Company’s common stock was worth nowhere close to the \$1.80 per share price
12 at which Plaintiff was induced to sell his shares just four months earlier. Indeed, after Plaintiff
13 expressed interest in buying back into Getaround, Mr. Kosmicki informed Plaintiff on August 23
14 that the share price would be \$6.64 per share.

15 64. Finally, in a phone call between Plaintiff and Mr. Zaid on October 26, 2018, Mr.
16 Zaid confirmed that there was, in fact, an \$18 million Series C-1 financing round priced at \$7.75
17 per share in March 2018. This admission by Mr. Zaid confirms that Getaround’s shares were
18 worth significantly more than what the Getaround Defendants led Plaintiff and his potential
19 buyers to believe they were worth in March, and that Mr. Kosmicki’s apparent denial of the
20 Series C-1 financing round was highly misleading.

21 **FIRST CAUSE OF ACTION**
22 **Fraudulent Concealment**
23 **(Against the Getaround Defendants)**

24 65. Plaintiff hereby reincorporates and re-alleges all the preceding paragraphs as if
25 fully set forth herein.

26 66. As previously alleged in greater detail, the Getaround Defendants provided
27 misleading and incomplete information about the Company to Plaintiff, as well as to Kline Hill
28 and G Squared, with the intent and expectation that those entities would convey that information
to Plaintiff and base their offer for Plaintiff’s shares on that information.

1 67. As previously alleged in greater detail, when providing Plaintiff and his interested
2 buyers with information intended to derive a valuation of Plaintiff's Getaround common stock,
3 the Getaround Defendants concealed highly material facts bearing directly on that issue,
4 including that Getaround was on the brink of announcing a Series C-1 financing round priced at
5 \$7.75 per share and a valuable partnership with Uber. Despite the fact that Defendant Sam Zaid
6 disclosed some financial information about Getaround directly to Plaintiff, Mr. Zaid never
7 disclosed these the Series C-1 or the Uber partnership. Moreover, at Mr. Zaid's direction and
8 with his full knowledge, Defendant Adam Kosmicki disclosed extensive information about
9 Getaround's financial condition and prospects to Plaintiff's potential buyers, but concealed the
10 Series C-1 and Uber partnership, intending or having reason to expect that these nondisclosures
11 would be transmitted to and acted upon by Plaintiff.

12 68. The Getaround Defendants had a duty to disclose these material facts for multiple
13 reasons:

14 a. First, they specifically undertook to and did provide information about the
15 financial condition and prospects of the Company, but intentionally failed to disclose the Series
16 C-1 and the Uber partnership, making the disclosures they did make materially misleading.

17 b. Second, the Series C-1 and the Uber partnership were known or accessible
18 only to the Getaround Defendants, and they knew that these material facts were not known to or
19 reasonably discoverable by Plaintiff or his potential buyers. Because Getaround was (and still is)
20 a privately held company, there was little, if any, public information about the Company's
21 financial condition and prospects, as Defendant Sam Zaid confirmed to Plaintiff. Indeed, the
22 entire reason that Plaintiff asked Mr. Zaid for help in valuing his shares was because of the
23 absence of such information in the public domain.

24 c. Third, the Getaround Defendants actively concealed the discovery of the
25 Series C-1 from Plaintiff. As previously alleged in greater detail, when Plaintiff began to suspect
26 that there was Series C-1 at \$7.75 per share a month earlier, on May 20, 2018, Getaround's CFO
27 Adam Kosmicki misleadingly suggested that that financing round had not happened.

1 d. Fourth, there existed a confidential relationship between the Getaround
2 Defendants and Plaintiff, which imposed a duty to disclose the Series C-1 and Uber partnership
3 to Plaintiff. Plaintiff was vulnerable to the Getaround Defendants, as evidenced by the fact that
4 he candidly informed them that he lacked the information necessary to value his shares and
5 asked them for their help in doing so because that information was not otherwise available. That
6 vulnerability resulted in the empowerment of the Getaround Defendants, which they readily
7 accepted and which prevented Plaintiff from protecting himself. Moreover, a confidential
8 relationship between Plaintiff and Sam Zaid had existed over a period of time, given their
9 longstanding personal and professional relationship during which Plaintiff had previously
10 entrusted Mr. Zaid to provide information about the Company. Thus, in this instance, Plaintiff
11 had no reason to believe that Mr. Zaid or his cohorts would conceal material facts or provide
12 misleading information.

13 69. The Getaround Defendants intentionally concealed or suppressed the Series C-1
14 and the Uber partnership with the intent to defraud Plaintiff. They concealed these material facts
15 directly from Plaintiff, and also concealed them from Plaintiff's potential buyers intending or
16 having reason to expect that they would be acted upon by Plaintiff in deciding whether and for
17 how much to sell his shares. The Getaround Defendants did this to deceive Plaintiff into
18 agreeing to sell his shares for far less than what they were worth, so that they could then exercise
19 Getaround's ROFR and acquire or assign Plaintiff's shares at a heavy discount to their family
20 and friends. Additional information regarding the Getaround Defendants' knowledge of the
21 misleading nature of their omissions and intent is peculiarly within their knowledge and control.

22 70. Plaintiff was unaware of the impending Series C-1 and the Uber partnership, and
23 would not have sold his shares at \$1.80 per share had he known of these highly material facts.
24 Indeed, no reasonable investor would have agreed to sell shares at that price had he known that
25 the Company would itself disclose a price of \$7.75 per share—or 330 percent higher—just
26 weeks later in connection with a major financing round. Nor would a reasonable investor have
27 agreed to that price had he known that the Company would announce a major strategic
28 partnership with the largest ridesharing company in the country just weeks later. The Getaround

1 Defendants knew or had reason to expect that the statements and omissions they made to
2 Plaintiff's potential buyers would be transmitted to Plaintiff and acted upon by Plaintiff in
3 deciding whether and for how much to sell his shares.

4 71. As a result of the Getaround Defendants' concealment of material facts, Plaintiff
5 was damaged in an amount upwards of \$1.785 million—i.e., the difference between the \$7.75
6 per share pricing in the Series C-1 (300,000 shares x \$7.75 per share, or \$2,325,000) and the
7 amount he received (300,000 shares x \$1.80 per share, or \$540,000).

8 72. As a result of their fraudulent conduct, the Getaround Defendants are also liable
9 for punitive damages.

10 73. Furthermore, even if either Sam Zaid or Adam Kosmicki did not directly conceal
11 material facts, each is nonetheless liable for aiding and abetting the other's concealment.
12 Mr. Zaid and Mr. Kosmicki knew that the respective conduct of the other amounted to
13 concealment and gave substantial assistance or encouragement to the other to so act.
14 Specifically, on information and belief, Mr. Zaid instructed and directed Mr. Kosmicki to
15 provide financial information to Plaintiff's potential buyers but to conceal any information about
16 Getaround's imminent Series C-1 and Uber partnership, knowing that these nondisclosures
17 would be transmitted to and acted upon by Plaintiff, and Mr. Kosmicki fully complied. On
18 information and belief, Mr. Zaid and Mr. Kosmicki also gave substantial assistance to the other
19 in accomplishing the concealment and his own conduct, separately considered, constitutes a
20 breach of duty to Plaintiff.

21 74. Getaround itself is liable under the doctrine of respondeat superior for the
22 fraudulent conduct of its CEO Sam Zaid and its CFO Adam Kosmicki. At all times relevant to
23 this action, Messrs. Zaid and Kosmicki were acting in their capacities as officers of Getaround in
24 failing to disclose material facts to Plaintiff and his potential buyers. Moreover, Mr. Kosmicki
25 signed each of the Stock Transfer Agreements on behalf of Getaround.

26 75. The Getaround Defendants are all jointly and severally liable for their wrongful
27 conduct.

SECOND CAUSE OF ACTION
Aiding and Abetting Fraud
(Against the Purchaser Defendants)

76. Plaintiff hereby reincorporates and re-alleges all the preceding paragraphs as if fully set forth herein.

77. The Getaround Defendants engaged in conduct constituting fraudulent concealment, as set forth above.

78. On information and belief, the Purchaser Defendants knew that the Getaround Defendants' were engaging in fraudulent conduct, and gave them substantial assistance and/or encouragement to engage in that conduct. After all, the Purchaser Defendants stood to collectively gain an instant windfall of millions of dollars as a result of the Getaround Defendant's conduct. Additional information regarding the Purchasing Defendants' knowledge and intent is peculiarly within their knowledge and control.

79. The Purchaser Defendants' conduct was a substantial factor in causing harm to Plaintiff.

80. As a result of their conduct, each of the Purchaser Defendants is jointly and severally liable for the harm to Plaintiff.

81. As a result of their fraudulent conduct, the Purchaser Defendants are also liable for punitive damages.

THIRD CAUSE OF ACTION
Civil Conspiracy to Defraud
(Against the Purchaser Defendants)

82. Plaintiff hereby reincorporates and re-alleges all the preceding paragraphs as if fully set forth herein.

83. The Getaround Defendants engaged in conduct constituting fraudulent concealment, as set forth above.

84. On information and belief, the Purchaser Defendants were aware that the Getaround Defendants planned to fraudulently conceal from Plaintiff and his potential buyers the imminent Series C-1 and Uber partnership. The object of the conspiracy was to deceive Plaintiff into agreeing to sell his shares to his potential buyers for significantly less than what Defendants

1 knew those shares were worth, after which Getaround would exercise its ROFR to assign the
2 right to purchase Plaintiff's shares to the Purchaser Defendants at that artificially deflated price.
3 Additional information regarding the Purchasing Defendants' knowledge and intent is peculiarly
4 within their knowledge and control.

5 85. On information and belief, the Purchaser Defendants agreed with one or more of
6 the Getaround Defendants and intended that the fraudulent scheme be committed. Indeed, the
7 Purchaser Defendants are immediate family members and friends of Defendant Sam Zaid and
8 Getaround co-founder and CTO Elliot Kroo, and stood to instantly gain millions of dollars in
9 stock value.

10 86. In furtherance of the conspiracy, each of the Purchaser Defendants signed the
11 Stock Transfer Agreements, paid artificially discounted prices for Plaintiff's shares, and accepted
12 the transfer of Plaintiff's shares netting them an instant windfall of \$1.785 million.

13 87. As a result of this wrongful conduct, Plaintiff was damaged in an amount no less
14 than \$1.785 million, for which each participant of the conspiracy is responsible jointly and
15 severally regardless of the degree of his activity.

16 88. As a result of their fraudulent conduct, the Purchaser Defendants are also liable
17 for punitive damages.

18 **FOURTH CAUSE OF ACTION**
19 **Securities Fraud in Violation of Cal. Corp. Code §§ 25400(d) & 25500**
20 **(Against the Getaround Defendants)**

21 89. Plaintiff hereby reincorporates and re-alleges all the preceding paragraphs as if
22 fully set forth herein.

23 90. The Getaround Defendants offered to purchase or purchased securities from
24 Plaintiff. As previously alleged in greater detail, on April 4, 2018, Mr. Kosmicki informed
25 Plaintiff that Getaround wished to exercise the ROFR to purchase Plaintiff's securities in full,
26 thereby offering to purchase Plaintiff's securities. Additionally, on April 10, 2018, Mr.
27 Kosmicki informed Plaintiff that Getaround would be exercising the ROFR and assigning it to
28 the Purchaser Defendants, thereby purchasing or offering to purchase Plaintiff's securities on
behalf of the Purchaser Defendants.

91. The Getaround Defendants, for the purpose of inducing Plaintiff's sale of securities, omitted to state material facts necessary in order to make the statements they made, in the light of the circumstances under which they were made, not misleading. As previously alleged in greater detail, the Getaround Defendants concealed highly material facts bearing directly on the value of Plaintiff's Getaround common stock, including that Getaround was on the brink of announcing a Series C-1 financing round priced at \$7.75 per share and a valuable partnership with Uber.

93. Plaintiff sold his Getaround securities at a price which was affected by these misleading omissions.

FIFTH CAUSE OF ACTION
Insider Trading in Violation of Cal. Corp. Code §§ 25402 & 25502
(Against the Purchaser Defendants)

1 97. On information and belief, at the time that the Purchaser Defendants agreed to
2 purchase and constructively purchased Plaintiff's common stock through Getaround's exercise of
3 the ROFR, by reason of their close familial and personal relationships with Getaround co-
4 founder and CEO, Sam Zaid, and Getaround co-founder and CTO, Elliot Kroo, the Purchaser
5 Defendants had access to highly material information about Getaround which was not generally
6 available to the public and which they knew was not intended to be public, including the
7 Company's imminent Series C-1 priced at \$7.75 per share and the Uber partnership. Additional
8 information regarding the Purchasing Defendants' knowledge and intent is peculiarly within
9 their knowledge and control.

10 98. At the time of such purchases, that information was not generally available to the
11 public, and the Purchaser Defendants knew it was not intended to public and had no reason to
12 believe that Plaintiff was also in possession of that information. Had such information been
13 generally available, it would have significantly affected the market price of Plaintiff's common
14 stock. Indeed, after Getaround disclosed the Series C-1 and the Uber partnership, Plaintiff's
15 original buyer (Kline Hill) bought Getaround stock from a different seller at or near \$7.75 per
16 share.

17 99. Pursuant to California Corporations Code § 25502, the Purchaser Defendants are
18 each liable to Plaintiff for damages equal to the difference between the price at which they
19 purchased Plaintiff's common stock and the market value which that stock would have had at the
20 time of the purchases if the information known to the Purchaser Defendant had been publicly
21 disseminated prior to that time and a reasonable time had elapsed for the market to absorb the
22 information, plus interest at the legal rate.

23 **SIXTH CAUSE OF ACTION**
24 **For Unjust Enrichment / Quasi-Contract**
 (Against the Purchaser Defendants)

25 100. Plaintiff hereby reincorporates and re-alleges all the preceding paragraphs as if
26 fully set forth herein.

27 101. As set forth above, the Getaround Defendants deceived Plaintiff into agreeing to
28 sell his Getaround shares at a fraction of their actual value by failing to disclose the imminent

1 Series C-1 and Uber partnership, and then assigned the right to buy those artificially deflated
2 shares to the Purchaser Defendants. The Stock Transfer Agreements through which the
3 Purchaser Defendants purchased Plaintiff's shares at \$1.80 per share were procured by fraud.

4 102. The Purchaser Defendants have received the benefit of Plaintiff's stock sale at
5 approximately a 330 percent discount to its actual value, and due to the alleged fraud in
6 procuring Plaintiff's assent to the sale, have retained this benefit unjustly and at Plaintiff's
7 expense.

8 103. Plaintiff is therefore entitled to restitution equal to the amount by which the
9 Purchaser Defendants were unjustly enriched in an amount no less than \$1,785,000.

10 **PRAYER**

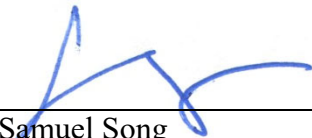
11 **WHEREFORE**, Plaintiff Geoffrey Shmigelsky prays for judgment against defendants
12 Getaround, Inc., Sam Zaid, Adam Kosmicki, Mohamed Zaid, Tariq Zaid, Leo Grant, Kasra
13 Maftoon, and Ilan Kroo as follows:

- 14 1. For compensatory and special damages of no less than \$1,785,000;
- 15 2. For punitive damages;
- 16 3. For pre-judgment interest;
- 17 4. For restitution under principles of unjust enrichment of no less than \$1,785,000;
- 18 5. For attorney's fees, costs, and expenses as may be allowed by law; and
- 19 6. For such other and further relief this Court deems just and proper.

20
21 Dated: January 14, 2019

GAW | POE LLP

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23 By:

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25 Samuel Song
26 Attorneys for Plaintiff
27 Geoffrey Shmigelsky
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Dated: January 14, 2019

GAW | POE LLP

Samuel Song
Attorneys for Plaintiff
Geoffrey Shmigelsky